PART IV

Section -2-C (ii)

STATUTORY ORDERS ISSUED BY THE STATE GOVERNMENT UNDER THE CENTRAL ACTS AND STATE ACTS.

GOVERNMENT OF MYSORE

FOOD, CIVIL SUPPLIES AND LABOUR DEPARTMENT

Labour Dispute :—Industrial Dispute between the Workmen and the Management of City Co-operative Bank Limited, Shimoga.

Award of the Labour Court at Mangalore—Published.

Read the following papers :

(1) Letter No. A/ID. 32/72-73, dated 1st December 1972 from Sri B. Hanumanthaiah. Presiding Officer, Labour Court, Mangalore.

BEFORE THE LABOUR COURT AT MANGALORE

Dated 29th November 1972

Reference (ID) (LCM) No. 32 of 1970

PRESENT :

B. Hanumanthaiah, B.SC., LL.B., .. *Presiding Officer,*

BETWEEN :

Sri M. Krishna Murthy, Ex-Clerk, City Co-operative Bank Limited, Shimoga, No. 775, B. B. Street, Shimoga.
I Party

and

The Management of City Co-operative Bank Limited, Shimoga
II Party

AWARD

The State Government of Mysore being of the opinion that an Industrial Dispute exists between the workmen and the Management of City Co-operative Bank Limited, Shimoga, has by its order No. FCL 189 LLD 70, dated 21st August 1970 referred the said dispute to this Court for adjudication, under Section 10-1 (c) of the Industrial Disputes Act, 1947. After the receipt of the order the dispute was registered as (ID) (LCM) No. 32 of 1970, and notices were issued to the parties to file their statements.

2. The first party Sri M. Krishna Murthy has in his statement averred as follows: The first party was an employee under the second party, the City Co-operative Bank Limited, for 22 years; On account of ill-health, he applied for a day's leave on 7th January 1969 and extended the same due to continued ill-health; As per the advise of the Doctor, he applied for a month's leave from 27th January 1969 to 27th February 1969 enclosing medical certificate from a Registered Medical Practitioner. On 12th February 1969 he was served with a Memo No. 469, dated 11th February 1969 asking him to return to duty within 3 days with the reasons that the first party workman was in good health, failing which he would be kept under suspension. The first party requested the second party to permit him to avail the leave as per the Doctor's advise. 12 days' later, he was served with a Memo No. 520, dated 24th February 1969 intimating that he was kept under suspension alleging that he was often taking leave to attend misappropriation cases and causing hindrance to bank work. On 8th April 1969 Memo No. 553, dated 17th March 1969 framing certain charges in support of the suspension order was served on him, and he has sent a reply denying all the charges. On 24th May 1969 an enquiry was held by the President of the Bank, and the enquiry was one-sided and was un-concerned with the City Co-operative Bank affairs. It is alleged that the only object of the enquiry was to build up records against the first party. On 7th July 1969 a show cause notice was issued calling upon him to show cause as

to why he should not be dismissed from services as per evidence, documentary and oral, on record, and the same was duly replied denying the allegations made in the order and stating that the order was against the Co-operative Act and Rules and affairs of the Management. On 10th September 1969 Memo No. 118. dated 8th September 1969 was served by registered post intimating that he has been dismissed from service from the forenoon of 1st September 1969. It is claimed by the first party that he has submitted all reasonable explanations, which the President Sri K. Shankarappa as Enquiry Officer, has not considered or taken into account and has failed to view the faithful, sincere and loyal services rendered by the first party. It is alleged that the management, while passing the resolution of dismissal, has been carried away by the report of Sri K. Shankarappa, President, as related to the first party to gain the ulterior motive of confirmation of dismissal. The first party prays for the relief of reinstatement and for payment of arrears of salaries, etc., for the entire period of suspension and till the date of reinstatement.

3. The Second party has filed its objections statement outside it. The members of the staff are less thas ten and is liable to be thrown out as being not maintainable. It is stated that the Co-operative Bank functions only within the Municipal limits of Shimoga and has no office or branches outside it. This members of the staff are less than ten and it is registered under the Mysore Co-operative Societies Act; it is only a co-operative society, and is working under the provisions of the Mysore Co-operative Societies Act. It is further stated that the Co-operative Societies Act is a complete special Act, and Co-operation being exclusively a State subject, the Industrial Disputes Act does not apply. Further it is stated that the Board of Directors are entrusted with the powers to manage including taking disciplinary action against its employees as per the Bye-law and any finding or any action taken by the management against its employee by way of disciplinary action can be appealed against to the General Body of the Institution and can also

be taken as a dispute under Section 70 of the Co-operative Societies Act, and an appeal lies therefrom to the higher tribunals. This is the scheme of the Co-operative Societies Act, and as such, the Industrial Disputes Act has no relevance or application, and as such, this Court has no jurisdiction in the matter.

4. It is also stated by the second party that all the preliminaries necessary before disciplinary proceedings could be started or continued, have been taken in this case and as such compliance with natural justice and requirements of the procedure have been made and therefore, the reference is not tenable or maintainable. It is contended that the subject matter of the petition *i.e.*, the prayer for reinstatement, is not one coming within the scope of the Labour Court or is not one concerning Industry, and is not one which can correctly and properly be described as an Industrial Dispute, in view of the provisions of the special enactment, namely the Mysore Co-operative Societies Act, the rules thereunder and the bye-laws. The management has got power and jurisdiction to take desciplinary action against its employee and when it was found that the first party used to be continuously absent and send false leave letters either before or after his absence without previous sanction of leave and when the Bank could not make other arrangements in such a sudden contingency and when inspite of warnings not to do so and when the Bank found that such a repetition of conduct on the part of the first party dislocated the work of the bank and cauesd dislocation and obstruction, the management of the Bank thought of taking disciplinary action and instituted enquiry against him and the first party subjected himself to the enquiry and cross-examined witness and cited his own witness who was examined by the enquiry officer. The Board of Directors of Bank by a resolution authorised the President of the Bank to hold enquiry after framing proper charges ; the President did accordingly and found ultimately that it was necessary to dispense with the services of the first party and orders were passed accordingly. All opportunities were provided

to the first party before he was dispensed with in the matter and giving opportunity to cross-examine managements' witnesses and giving an opportunity to examine his witness, and requirements of natural justice have been complied with. It is stated that the Labour Court or the Industrial Tribunal does not have any jurisdiction or power in such a matter as this which is governed by the provisions of the special enactment, namely, The Mysore Co-operative Societies Act and Rules thereunder and Bye-laws of the Society and that too in a matter concerning desciplinary action. The provisions of the Mysore Co-operative Societies Law obtaining in Mysore State together with the Bye-laws of the Bank are clear enough and exclusive enough to give jurisdiction only to the bodies and authority stated in the said enactment. It is also stated that the provisions of the Andhra Pradesh Co-operative Societies Act or the Rules thereunder do not apply in view of difference in language between the Andhra Pradesh provision and the Mysore State Law and decisions concerning Andra Pradesh Law are not applicable to the present case. The Government cannot make a valid reference to any Industrial Court or Tribunal According to the Bye-law No. 35(7) of the Bank and the Law governing the matter like this, the General Body of the Bank must consider the matter, and the first party has surpassed and ignored the General Body. It is also contended that the subject matter does not concern any conditions of employment or service of any particular individual, but is one relating to desciplinary action against an undesirable employee and it does not involve the consideration of a group or federation of employees of common question between them and the management, but it is a case of indiscipline of an employee and consequent desciplinary action taken against him. That it is only the authority or body mentioned in the Co-operative Law that has jurisdiction and the Labour Court has no jurisdiction.

5. It is denied that the enquiry was one-sided and it is pleaded that the enquiry underwent several dates of hearing and the first party could have given a written application

if there was any truth in the allegation that the President should not have cnnducted any enquiry, and that the allegation against the President is a concoction and the result of an after-thought and there is no truth in this allegation. It is also pleaded that the first party is not entitled to any further salary or emoluments. It is admitted that the first party was an employee of the second party for 22 years.

6. It is further stated that on 7th January 1969 the first party applied for a day's leave and on 8th January 1969 he applied for further leave of 3½ days. That on 13th January 1969 he applied for further leave of two weeks; on 27th January 1969 with an application for a month's further leave he sent a Medical certificate. The medical certificate is not in accordance with Rule 18(3) (VI) of the Mysore Co-operative Societies Rules, 1960, as according to that Rule a certificate from a Government Medical Officer not below the rank of an Assistant Surgeon was necessary. It is true that the first party was kept under suspension as per Memo No. 520, dated 24th February 1969. It is stated that the first party appeared before the President of the Bank and submitted to the Enquiry Officer and the enquiry was held on 15th April 1969, 23rd April 1969, 24th May 1969, 31st May 1969, 11th June 1969, 16th June 1969, 21st June 1969 and 23rd June 1969. On 30th June 1969 the then President reduced to writing his findings holding that it is a fit case for dismissal of first party from service of the Bank, and the same was placed before the meeting of the Board of Directors and a resolution was passed as per Resolution No. 4, dated 6th July 1969. Thereafter a show cause notice was issued and the first party sent his reply. Finally a resolution was passed by the managing committee as per Resolution No. 4, dated 7th September 1969. It is stated that the first party was dismissed from service after framing of certain charges and after recording the deposition of the first party his witness Sri R. Maharaj and the Secretary of the Bank and Sri U. S. Narayana Rao and after considering several documents exhibited by the parties in the course of evidence, and the first party was given ample opportunity,

and he was dismissed since the charges are proved. It is denied that Sri K. Shankarappa has not considered or taken into account the explanations of the first party and has failed to view the faithful, sincere, and loyal service. It is denied that the Bank was carried away by false and frivolous allegations. It is prayed that the mis-management, misutilisation of funds were proved in the enquiry. The first party has misrepresented the facts and he is not entitled to reinstatement. It is also stated that in view of the provisions of Section 70 of the Mysore Co-operative Societies Act of 1959, the dispute shall be referred to the Registrar for decision and this Court has no jurisdiction to entertain any dispute. In support of the plea that the Labour Court has no jurisdiction to enquire into the dispute, the second party has also relied on the Award passed by the Labour Court, Hubli. The second party prays that the claim of the first party may be dismissed.

7. The first party has filed a rejoinder on 24th October 1970. It is stated by the first party that a Co-operative Society or a Co-operative Bank is an 'industry' within the meaning of the Industrial Disputes Act, and therefore, the reference is in order. It is stated that the present dispute does not fall under definitions specified under Section 70(2) of the Mysore Co-operative Societies Act, and as such, the Registrar of Co-operative Societies has no jurisdiction to entertain the dispute pertaining to the service conditions of the Co-operative Society and its employee. It is reaffirmed that the Industrial Courts have exclusive jurisdiction to entertain and decide Industrial Disputes between a Co-operative Society and its employee. It is again reaffirmed that the enquiry is not in accordance the natural justice and it is a precenceded plot to somehow get rid of the workman. The workman, for some time, was a member of the Executive Committee of the State Co-operative Institutions Employers' union in Karnatak and further he was Vice-President of the District Co-operative Employees Union, Shimoga. He used to take some active interest for the improvement of the service conditions of the Co-opera-

tive Employees and in particular in the above Co-operative Bank where he was an employee. He represented to his management the grievances of the workmen of the second party, and since the matter was not solved he requested the State Union to write to the second party management for the improvement of pay scales etc. on 26th August 1968 and his management did not relish, and the management has been all the while thinking as to weaken his position in the Bank and ultimately to send him out of job. It is alleged that after sometime the management framed certain charges which are in no way connected either with the affairs or management or business of the Bank. It is denied that the first party had misappropriated funds of Gandhi Bazar Consumers' Co-operative Society Limited, Shimoga. It is stated that no false leave letters were submitted to the management and that the employee was entitled to avail the leave, and since he was not well he extended the leave and he had in support of illness sent a Medical Certificate. It is further stated that it was not necessary to send the medical certificate only issued by the Assistant Surgeon of the Government. The workman had sufficient earned leave at his credit and he was entitled to utilise that leave with full pay. It is stated that the first party has not dislocated the work of the Bank and has caused no obstruction and it is imaginery. It is stated that the procedure laid down in the rules framed under the *Ad-hoc* committee report has not been followed. The charge-sheet and Memo of refusal of leave was issued by the President and the enquiry was also conducted by him, and the enquiry should have been entrusted to the sub-committee or at least a person different than that of a person who has issued a charge memo and suspension order. Therefore it is contended that the enquiry is not properly held and the order of dismissal is illegal and is liable to be set aside. It is also stated that as provided in the model standing order of 1961, the allegation of mis-management, misutilisation of funds are not matters on which a charge could be framed as the matter related to Gandhi Bazar Consumers' Co-operative Society and in no way connected

with the second party. That the disputes between the workmen and the Gandhi Bazar Consumers' Society, are civil disputes and therefore, the second party had no jurisdiction to enquire into these matters. It is pleaded that the facts stated in para 32 of the counter statement that the facts relating to employment of the first party workman in Sri Kalika Parameswari Co-operative Society Limited, Shimoga and Gandhi Bazar Consumers' Co-operative Society Limited, Shimoga, are not found in the charge-sheet, and therefore, they cannot be taken into consideration. Further it is stated that the first party workman was a candidate in the Municipal Elections in Shimoga City in the year 1969 against Sri T. Vyasachar, who is the Director of the Bank. Therefore the management with a view to take vengeance against the employee, conducted the enquiry in such a way as to harm the employee. It is also alleged that the enquiry officer took the assistance of Sri T. Vyasachar, who was a rival candidate, and the enquiry is vitiated.

8. The first party workman is represented by Sri S. Krishna Moorthy. The second party Bank is represented by its business adviser, Sri T. L. Kallaiah The points of dispute referred to are the following:

(1) Whether the management of City Co-operative Bank, Shimoga, are justified in dismissing their workman Sri M. Krishna Murthy with effect from 1st September 1969 ?

(2) If not, to what other relief the workman entitled to ?

9. On the pleadings the following additional issues have been raised:

(1) Whether the jurisdiction of this Labour Court Mangalore is barred under Section 70 of the Mysore Co-operative Societies Act to entertain this reference as pleased in paras 3, 4, 7, 11, 12 and 28 of the counter statement, and

28 of the counter statement and whether the Labour Court is not competent to award the relief for reinstatement to the first party workman as pleaded in para 6 of the counter statement ?

(2) Whether the domestic enquiry taken against first party workman on the charge of his habitually remaining absent and sending leave letters thereafter thereby dislocating the work of the second party Bank was proper and in accordance with the principles of natural justice having given full opportunity to the first party workman to defend his case in the domestic enquiry ?

(3) Whether the charge levelled against the first party workman is proved ?

(4) Whether the first party workman who has been dismissed under the provisions of the Mysore Co-operative Societies Act after domestic enquiry is not competent to invoke the jurisdiction of the Labour court for relief ?

(5) Whether the first party workman is entitled to relief of reinstatement with backwages ?

(6) What Award ?

10. It is necessary to consider additional issues 1 and 4 together. These two issues relate to the question of jurisdiction. At the outset, it is contended by the learned representative of the second party that the activity carried on by the second party Bank is not an industry, and therefore, the dispute between the second party and the first party workman is not an industrial dispute. It is admitted that the second party Bank is carrying on banking business. As admitted by the first party workman Sri M. Krishna Murthy, the Bank has no branches and the strength of the Clerks is only about eight. Of course it is true that the magnitude of the business carried on by the

second party Bank is not very huge, the actively carried on by the second party is a business actively *i.e.*, the banking business.

11. It is contended that the Bank is registered under Section 4 of the Mysore Co-operative Societies Act of 1959, and therefore, the activity carried on by it is not a business activity. As provided under Section 4 of the Act, a co-operative Society which has as its objects the promotion of the economic interests or general welfare of its members, or of the public, in accordance with co-operative principles, or a co-operative society established with the object of facilitating the operations of such a society may be registered under this Act. The activity carried on by the Bank is for the promotiton of the economic interests of its members. Therefore, the mere fact that the second party is registered under the Co-operative Societies Act 1959, does not lead to the conclusion that the activity carried on by the second party Bank is not a business activity. My attention was also drawn to the provisions of Rule 22 which relates to the determination of nett profits. It is true that the shareholders are entitled to receive a dividend not exceeding 6¼ per cent, but this fact does not lead to the conclusion that the activity carried on by the second party is not a business activity.

13. It is contended by the learned representative for the second party that the dominant motive on the part of the second party is not to carry on a commercial activity. In Management of Station Canteen *vs.* Presiding Officer Labour Court and another (1972 I Mys. Law Journal P.79) it is ruled by their Lordships that the tests to be applied in order to determine whether an activity in which the employer is engaged is an industry or not, is whether the dominant motive on the part of the employer is to carry on a commercial activity or not. In that case it was found that the dominant object in running the canteen appear to be one of rendering assistance or aid to defence personnel who alone were entitled to buy goods from the

canteen. Therefore it was held that the canteen was not an industry within the meaning of Section 2 (j) of the Industrial Disputes Act, 1947. It is clear from the provisions of Section 4 of the Mysore Co-operative Societies Act 1959, that a co-operative society may be formed for the purpose of promoting the economic interests of its members. The activity carried on by the second party Bank is banking. The activity carried on by the second party cannot be said to be an activity carried on to aid its members, or an activity carried on for the purpose of rendering assistance to its members. In these circumstances, I am of the humble opinion that the tests laid down by their Lordships in the above case are not satisfied in this case and therefore, it cannot be found that the activity carried on by the second party Bank is not a business activity. For all the reasons stated above, I find that the activity carried on by the second party Bank is a business activity, and therefore, an 'industry'

14. In the counter statement it is stated that the dispute between the first party workman and the second party Bank is a dispute which shall be referred to the Registrar for decisions and therefore the Industrial Court has no jurisdiction to entertain the dispute. It is contended that the conditions of service of the officers and employees of Co-operative Societies are governed by the provisions of Rule 18 of the Mysore Co-operative Societies Rules, 1960, and as provided under sub-rule (10) of Rule 18, the Managing Committee or the person authorised by the committee has the authority to enquire and make an order of dismissal of the employee. An appeal lies to the General Body. Therefore, it is contended that the Labour Court has no jurisdiction to entertain the dispute, and the dispute should have been referred to the Registrar for decision.

15. The learned representative for the second party has drawn my attention to the following decisions: (i) The Award passed by the Labour Court Hubli in (ID) (LCH) No. 25/69, (ii) The Award passed by the

Labour Court, Bangalore in (ID) No. 27/71. In the Award in I.D. No. 25/69, the learned Presiding Officer found that the General Body of the Co-operative Society alone has the powers to consider the dispute, and therefore, the Industrial Court has no jurisdiction to adjudicate upon the dispute. The dispute referred for adjudication was, whether the management of The Dharwar District Co-operative Oil Seeds Proceeding Society Limited, Gadag, was justified in terminating the services of their employee Sri Basappa Basettappa Asooti. It was held by the Court that the Registrar had the power to decide the dispute regarding the terms of the employment, working conditions and desciplinary action taken by the Society. Their Lordships of the Mysore High Court have ruled in 1972 II Mysore Law Journal P. 327 that a dispute raised by the Secretary of the Society who has been dismissed, in relation to the dismissal, is not a matter touching the business of the society and the dispute does not fall within the scope of Section 70 of the Mysore Co-operative Societies Act, 1959. In view of the decision of their Lordships of the Mysore High Court, I find that it is not necessary to refer to the Awards relied on by the second party.

16. The only point that arises for consideration is whether the dispute is an industrial dispute and whether the Labour Court has power to decide the dispute. In the present case, the dispute is regarding the termination of the services of the first party workman who was an employee under the second party Bank. The second party Bank is a Co-operative Society. In Co-operative Central Bank Limited, and others *vs.* Additional Industrial Tribunal Andhra Pradesh (A.I.R. 1970 245) Their Lordships of the Supreme Court have laid down that a dispute relating to alterations of conditions of service, cannot be held to be a dispute touching the business of the Society, and such a dispute is not contemplated or dealt with under Section 62 of the Andhra Pradesh Co-operative Societies Act and could only be dealt with by the Industrial Tribunal.

17. The dispute now raised is a dispute regarding the termination of service of the first party workman. Their Lordships of the Mysore High Court have in 1979 II Mysore Law Journal P. 327, found that the dispute in relation to dismissal of an employee is not a matter touching the business of the society and the dispute does not fall within the scope of Section 70 of the Mysore Co-operative Societies' Act. Therefore, I find that this is not a dispute which should have been referred to the Registrar for decision.

18. It is further urged by the learned representative for the second party that though the dispute is not a dispute which falls within the scope of Section 70 of the Mysore Co-operative Societies Act, the Industrial Court has no jurisdiction to entertain the dispute since it is a matter which can be enquired into by a civil court. It is contended that by implication, it shall be found that their Lordships of the Mysore High Court have held that a dispute in relation to the dismissal of an employee is a dispute which can be adjudicated upon by the Civil Court and not by a special tribunal or a Labour Court. The question that arose for consideration before their Lordships of the Mysore High Court was whether the dispute raised was a dispute which fell within the scope of Section 70 of the Mysore Co-operative Societies Act. In that case it was not raised if the dispute was an industrial dispute and if it was a matter which should be exclusively dealt by a Labour Court or Tribunal.

19. In A.I.R. 1970 P. 245 Their Lordships of the Supreme Court have laid down that the following tests must be applied to decide if a dispute could be referred to the Registrar of Co-operative Societies under Section 61 of the Andhra Pradesh Co-operative Societies Act: (i) Is the dispute capable of being resolved by the Registrar or his nominee, (ii) If the dispute between the Society and the employee touches the business of the society. Further it was held by their Lordships that the dispute related to alteration of a number of conditions of service of the work-

men which relief could only be granted by an Industrial Tribunal dealing with an Industrial Dispute, and found that the Tribunal had jurisdiction to decide the dispute. Therefore, I am of the humble opinion that it is ruled by their Lordships that if the relief claimed is a relief which could only be granted by an Industrial Tribunal, it has to be referred to the Industrial Court for adjudication. Therefore I find that the contention urged by the learned representative for the second party that the decision of their Lordships of the Mysore High Court in 1972 II Mysore Law Journal P. 327, by implication, ruled that every dispute in relation to dismissal of an employee of a Co-operative Society, may be adjudicated upon by Civil Court, is not correct. In the present case the relief claimed is reinstatement of the employee. The matters over which Industrial Courts, i.e., the Labour Court and the Industrial Tribunal, may adjudicate upon are specified in the second schedule and third schedule to the Industrial Disputes Act 1947. Item No. 3 of the second schedule reads as follows :

> " Discharge or dismissal of workmen including reinstatement of or grant of relief to, workmen wrongfully dismissed ;"

From this it can be found that the relief of reinstatement can be granted by a Labour Court. It is not shown to me by the learned representative for the second party that this relief of reinstatement can be granted by the Civil Court. Therefore it is clear that the dispute relates to the relief which could only be granted by a Labour Court. As laid down by their Lordships of the Supreme Court in A.I.R. 1970 P. 245, a dispute which is not capable of being resolved by the Registrar or his nominee and when the relief claimed is the relief that could only be granted by a Labour Court, it may be referred to the Labour Court. Hence I find that this Court has jurisdiction to decide the dispute raised in this case.

20. In para 6 of the counter statement it is contended that in view of the provisions of the special enactment,

namely, the Mysore Co-operative Societies Act, the rules thereunder and the Bye-laws of the Bank, the dispute is not a dispute which can be adjudicated upon by a Labour Court. It is true that under sub-rule 10 of Rule 18 of the Mysore Co-operative Societies' Rules 1960, it is provided that the managing committee or the person authorised by such committee shall be an authority competent to discharge, dismiss or withhold the increment of the employee of the Society. As provided under sub-rule 12, an appeal shall lie to the General Body of the Society by an employee who has been punished. But it is not provided in the Rules that a dispute in respect of any disciplinary matter shall be referred to the Registrar of Co-operative Societies. When the order is made either under sub-rule 10 or under sub-rule 12, it will be an order made by the Society itself. Therefore the dispute between the Society and its employee regarding an order terminating his services is an industrial dispute. Therefore, I find that the contentions raised in para 6 of the counter statement are not tenable.

21. The fourth issue is whether the first party workman who has been dismissed under the provisions of the Mysore Co-operative Societies Act after domestic enquiry, is not competent to invoke the jurisdiction of the Labour Court for relief ? Even in cases where the domestic enquiry is held by the Society, still it is permissible for the employee to raise a dispute. Merely because an enquiry has been held, it cannot be said that no dispure arises. For all the reasons stated above, I find that the dispute regarding the termination of the services of the first party workman is a dispute which can be adjudicated upon by a Labour Court and it is an industrial dispute. This is my finding on issues Nos. 1 and 4.

22. The second issue raised is as follows:

> "Whether the domestic enquiry taken against the first party workman on the charge of his habitually remaining absent and sending leave letters thereafter thereby dislocating

the work of the second party Bank was proper and in accordance with the principles of natural justice having given full opportunity to the first party workman to defend his case in the domestic enquiry ?

At the outset it is urged by the learned representative for the first party workman that the enquiry is vitiated for the following reasons:

(1) The charges framed against the employee as mentioned in Ex. M-5 are very vague and indefinite.

(2) The enquiry Officer i.e., Sri K. Shankerappa, the President, had biased.

(3) Sri K. Shankerappa was not competent to hold the enquiry because it is who issued the show-cause notice.

(4) The first party workman was examined at the first instance and he was also cross-examined before evidence was recorded on behalf of the management.

(5) The evidence of Sri U. S. Narayana Rao was recorded in the absence of the first party.

(6) The first party was not allowed to examine the Assistant Registrar of Co-operative Societies.

(7) The first party workman was not given an opportunity to explain the circumstance appearing against him in the evidence recorded for the management.

(8) The second party Bank had no authority to enquire into the charges which relate to the conduct of the first party with respect to his dealings with the Gandhi Bazaar Consumers Co-operative Society.

23. Exhibit M-51 is the memo containing the charges levelled against the first party workman Sri M. Krishna Moorthy. They are as follows :

(1) It is brought to the notice of the President that the first party workman *i.e.*, Sri M. Krishna-Moorthy is involved in charges of mis-approporiation, mis-management and mis-utilisation of the funds of the Gandhi Bazaar Consumers Co-operative Society Ltd., Shimoga.

(2) His applying for leave frequently is only due to the fact that he is forced to attend the cases pending against him and thus has given false statement to the effect that he is not in good health.

(3) It is reliably ascertained that the mis-appropriation case against the first party is also decided against his favour in the Mysore Appellate Tribunal, Bangalore and thus it is established that he has mis-appropriated the funds of a sister Co-operative Institution and thereby he is not a desirable element to be continued in this Bank.

(4) He is applying for leave frequently in spite of warnings to the effect that without previous sanction of leave he should not absent and should not cause dislocation to the work of the Bank.

(5) On 7th January 1969 he applied for a day's leave, he did not turn to duty on 8th January 1969 but sent an application for further leave of 3½ days. Even on 13th January 1969 he did not return to duty but applied for two weeks leave and application was not supported with medical certificate. On 27th January 1969 with an application for a months further leave he sent a Medical certificate

dated 25th January 1969, wherein it is stated that he is under Medical treatment from 10th January 1969. Nothing prevented him from producing the Medical certificate with his application dated 13th January 1969. His attention is drawn to Rule 18(3)(VI) of the Mysore Co-operative Societies Rule 1960 and he has failed to produce a Medical certificate from a Government Medical Officer not below the rank of an Asst. Surgeon.

24. Exhibit M-52 is the explanation offered by Sri Krishna Moorthy. Exhibit M-54 is the order-sheet relating to the proceedings held by the Enquiry Officer in the domestic enquiry. As found in Ex. M-54 the enquiry was fixed to be held on 15th April 1969. Thereafter the enquiry was posted to 23rd April 1969. Since the first party did not turn up it was again adjourned to 24th May 1969.

25. Sri Shankerappa, the Enquiry Officer, is examined as M.W. 3. He has stated as follows with respect to the proceedings held by him: "I had framed 6 charges against the first party and fixed the date of enquiry on 15th April 1969 at 6 P.M. in the meeting hall of the second party Bank. On 15th April 1969 I received Ex. M-52, the explnation of the first party. I have recorded what took place on 15th April 1969 in the enquiry proceedings marked as Ex. M-54(a). The entire proceedings is marked as M-54. The proceedings on 15th April 1969 begin with the note of the Secretary and the signature of the first party and my order posting the case for evidence on 23rd April 1969 at 9 A.M. On 23rd April 1969 the first party refused to sign the proceedings of 15th April 1969 for having posted the case to 23rd April 1969 at 9 A.M. and I observed accordingly. On the hearing dated 23rd April 1969 the first party did not appear for the enquiry. From 23rd April 1969 as the party did not turn up the case was posted to 24th May 1969. However by a fresh notice which is dated 19th May 1969 I have issued notice to the first party to appear on 24th May 1969 at 6 P.M. for the enquiry. It is

served by muddam on the party on 20th May 1969. Ex. M-53(a) is the said acknowledgement and M-53 (b) is the signature of the first party. On 24th May 1969 the first party was present. I put questions to him and recorded his answers." He has put questions to Sri Krishna Moorthy and has recorded his answers. He has stated that there was no procedure laid down for holding domestic enquiry under the Co-operative Socieites Act or Rules, and therefore, he has recorded the questions and answers of the first party at the commencement of the enquiry.

26. On 31st May 1969 the enquiry had been posted for recording evidence on behalf of the first party workman. The first party had been required to adduce evidence even before the management led any evidence with respect to the charges levelled against the first party. The first party summoned 3 witnesses on his behalf. They are (i) R. Maharaj, (ii) Dr. Narayan and (iii) The Asst. Registrar of Co-op. Societies. Sri. R. Maharaj is examined on 11th June 1969. The statement of Sri R. Maharaj is recorded in the presence of Sri Krishna Moorthy and it is Exhibit M-56(a). M.W. 3 Sri Shankerappa has stated that the first party filed a Memo requesting for summons to be issued to the Asst. Registrar and he ordered that he would take up the matter into consideration after the statement of the Doctor was recorded. From 11th June 1969 the case was adjourned to 16th June 1969 and again to 21st June 1969 for recording evidence of Dr. Narayan. On 21st June 1969 Dr. Narayan was not present and therefore he is not examined. Sri Shankerappa has stated that he did not comply with the first party's request for sommoning the Assistant Registrar as it could not be legal. In the order-sheet it is recorded as follows :—

" ಕಾರ್ಮಿಕ 11-6-1969 ರ ಶ್ರೀ ಕೃಷ್ಣಮೂರ್ತಿಯವರ ಪತ್ರ ಪರಿಶೀಲಿಸಲಾಯಿತು. ಅನಿಷ್ಟಿಯ ರಿಜಿಸ್ಟ್ರಾರರವರನ್ನು ವಿಚಾರಣೆ ಮಾಡಲು ಇವರು ಕೋರಿರುವ ಕಾರಣ ಸಮರ್ಪಕವಾಗಿಲ್ಲ. ಸದ್ಯೋಜ್ಞಾನ ಅರ್ಜಿದಾರರು ಶ್ರೀ ಕೃಷ್ಣಮೂರ್ತಿಯವರು ಹೇಳಿರುವ ನಂಬಿಕೆ ಘಾತಕತ್ವವೇ ಆಗಿರಬಹುದು ಬೇರೆ ಕಾರಣಗಳಿವೆ. (ನಂ. 553/17/3/69 ನೇ ಮೆಮೊರಿಯಲ್ಲಿ ಕಾರಣಗಳು ವ್ಯಕ್ತವಾಗುತ್ತವೆ). ಹಾಗೂ ಅನಿಷ್ಟಿಯ ರಿಜಿಸ್ಟ್ರಾರವರು [illegible]

ಮಂಡಿನ ಈ ಸಂಸ್ಥೆಯ ಮೇಲ್ಮಟ್ಟ ಅಧಿಕಾರಿಗಳಾಗಿದ್ದು ಕೆಲವಂದರ್ಭಗಳಲ್ಲಿ ಅಪೀಲು ಕೋರ್ಟಿನ ಅಧಿಕಾರಿಗಳು ಸಹ ಆಗಿರುವುದರಿಂದ ಈ ಕೇಸಿನಲ್ಲಿ ಅವರ ವಿಚಾರಣೆ ಸೂಕ್ತವೂ ಅಲ್ಲ ನ್ಯಾಯಬದ್ಧವೂ ಆಗಿರುವುದಿಲ್ಲ. ಆದ್ದರಿಂದ ಈ ಸಮ್ಮುಂಧ ಶ್ರೀ ಕೃಷ್ಣಮೂರ್ತಿಯವರ ಕೋರಿಕೆಯನ್ನು ತಿರಸ್ಕರಿಸಲಾಗಿದೆ."

The only reason assigned is that the Asst. Registrar is an authority to whom an appeal would lie from the order made by the managing committee in certain respects. For that reason the Enquiry Officer has found that it was not open to the first party to examine the Asst. Registrar as his witness. On that day Sri. Mylar Rao was examined on behalf of the management. Thereafter the case was posted for recording the evidnce on behalf of the management. On 23rd June 1969 Sri Krishna Moorthy was absent and in his absence Sri U. S. Narayan Rao has been examined as a witness for the management. Then the case was posted for orders. On 30th June 1969 the Enquiry Officer has made a report as per Ex. M-55. In the order-sheet dated 23rd June 1969 it is not mentioned on what grounds Sri Krishna Moorthy prayed for an adjournment. It is also stated by the Enquiry Officer that the first party was present during Mylar Rao's examination, but he did not cross-examine Sri Mylar Rao. It is also made out that the first party was not present when the other witness Sri U. S. Narayan Rao was examined. The Statement of Sri Narayan Rao is Exhibit M-56(c) and the statement of Mylar Rao is marked as Ex. M 56(d). The order sheet dated 23rd June 1969 does not show for what reasons the Enquiry Officer found that the case should not be adjourned to give sufficient opportunity to Sri Krishna Moorthy. It was also necessary to afford an opportunity to Sri Krishna Moorthy to explain the circumstances appearing against him in the evidence tendered on behalf of the management.

97. From the evidence on record the following facts have been established: (i) The workman Sri. Krishna Moorthy has been cross-examined even before the evidence against him was taken. (ii) Sri U. S. Narayan Rao was examined in the absence of the first party workman.

(iii) He was not required to explain the circumstances appearing against him in the evidence of the witnesses for the management. (iv) The enquiry Officer has refused to summon the Asst. Registrar as a witness on behalf of the first party workman.

28. In 1963 (II) LLJ. P. 371 it is laid down by Their Lordships of the Supreme Court that where one is dealing with domestic enquiries in industrial matters the proper course for the management is to examine the witnesses from the beginning to the end in the presence of the workmen at the enquiry itself. It is also observed that oral examination always takes much longer time than a mere reading of a prepared statement of the same length and brings home the evidence more clearly to the person against whom the enquiry is being held. In this case the evidence of Sri U. S. Narayan Rao is recorded in the absence of the first workman Sri Krishna Moorthy. During the course of his arguments, the learned representative for the second party urged that the first party has obtained a certified copy of the deposition of Sri U. S. Narayan Rao. But it is clear that the first party was not required by the Enquiry Officer to explain the circumstances appearing against him in the evidence of the witnesses for the management. In these circumstances, I find that the Enquiry Officer has not acted properly in recording the statement of Sri U. S. Narayana Rao, in the absence of the first party. I have also observed that in the order-sheet dated 23rd June 1969 it is not recorded on what grounds Sri Krishna Moorthy prayed for an adjournment. Therefore it is not possible to find that the Enquiry Officer was correct in refusing an adjournment and recording the evidence of Sri U. S. Narayan Rao, in the absence of the first party workman. In these circumstances, I find that the enquiry is defective in so far as no opportunity has been afforded to the first party workman Sri Krishna Moorthy, to explain the circumstances appearing against him in the evidence of the witnesses for the management.

29. It is now of course urged by the learned representative for the second party* that no prejudice has been caused to the first party workman from not summoning the Asst. Registrar of Co-operative Societies, and it was open to the first party to summon the Asst. Registrar of Co-operative Societies as his witness before the Labour Court. I find that at this stage it is not necessary to examine the contention if it was open to the first party to summon the Asst. Registrar of Co-op. Societies as a witness and examine him before the Labour Court in these proceedings.

30. In 1967 (II) LLJ P. 715 (A.I.R. 1968 P. 236), the question if an enquiry offends principles of natural justice where the workman was examined and cross-examined even before the evidence against him was recorded, arose for consideration before Their Lordships of the Supreme Court. Their Lordships have observed as follows:

> "This leaves over the contention that before examining the witnesses Subramaniam was subjected to cross-examination. This was said to offend the principles of natural justice and reliance was placed on 1963-II L. L.J. 367, 392, 396 and 452. These cases no doubt lay down that before a delinquent is asked anything, all the evidence against him must be led. This cannot be an invariable rule in all cases. The situation is different where the accusation is based on a matter of record or the facts are admitted. In such a case it may be permissible to draw the attention of the delinquent to the evidence on the record which goes against him and which if he cannot satisfactorily explain must lead to a conclusion of guilt. In certain cases it may even be fair to the delinquent to take his version first so that the enquiry may cover the point of difference and the witnesses may be questioned properly on the aspect of the case suggested by him. It is all a question

of justice and fairplay. If the second procedure leads to a just decision of the disputed points and is fairer to the delinquent than the ordinary procedure of examining evidence against him first, no exception can be taken to it. It is, however, wise to ask the delinquent whether he would like to make a statement first or wait till the evidence is over but the failure to question him in this way does not *ipso facto* vitiate the enquiry unless prejudice is caused. It is only when person enquired against seems to have been held at a disadvantage or as objected to such a course that the enquiry may be said to be vitiated. It must, however, be emphasized that in all cases in which the facts in controversy are disputed, the procedure ordinarily to be followed is the one laid down by this Court in the cited cases. The procedure of examining the delinquent first may be adopted in a clear case only.

31. I have earlier referred to the Charge Memo Ex. M-51 and recorded what are the charges framed or levelled against the first party workman. Charge No. 1 states that it was brought to the notice of the Enquiry Officer that Sri Krishna Moorthy was involved in charges of mis-appropriation, mis-management and mis-utilisation of the funds of Gandhi Bazaar Consumers' Co-operative Society. Charge No. 3 relates to the decision against Sri Krishna Moorthy by the Mysore Appellate Tribunal. Charge No. 2 states that Sri Krishna Moorthy was applying for leave frequently and he has given false statement to the effect that he was not in good health. At the time when the charges were framed the charges were not based on any documents available with the Enquiry Officer. As laid down by Their Lordships of the Supreme Court, in cases where the accusation is based on a matter of record or the facts are admitted, it is permissible to draw the attention

of the delinquent to the evidence on the record which goes against him and require him to explain the said evidence. It is also not stated by the Enquiry Officer that he questioned the delinquent whether he would like to make a statement first or wait till the evidence is over. It is of course true that no objection is raised by the first party workman when he was first examined by the Enquiry Officer. It is laid down by their Lordships that the procedure of examining the delinquent first may be adopted in a clear case only. Since in the present case the charges 1 and 3 are not based on any record that were available with the Enquiry Officer at the time when the enquiry was held and the necessary records were not available with the Enquiry Officer to be shown to the first party workman, I find that the procedure of examining the delinquent at the first instance in this case was not correct.

32. It is contended by the learned representative for the first party that the Enquiry Officer Sri Shankerappa was biased and he was not competent to hold the enquiry. It is held that the doctrine of bias is applicable to Tribunals entrusted with quasi-judicial functions and apply principles of law enunciated in A.I.R. 1959 S.C. 1376. The enquiry was held to be defective and it was quashed. In 1969 (II) LLJ. P. 495 the observations of their Lordships of the Supreme Court are quoted as follows:

> "Tribunals or authorities who are entrusted with quasi-judicial functions are as much bound by the relevant principles governing the 'doctrine of bias' as any other judicial tribunal. This Court in a recent decision in Nageswara Rao *vs.* State of Andhra Pradesh (A.I.R. 1959 S.C. 1376), observed;
>
> The principles governing the "doctrine of bias" *vis-a-vis* judicial tribunals are well-settled and they are:
>
> (i) no man shall be judge in his own cause;

(ii) justice should not only be done but manifestly and undoubtedly seem to be done.'

The two maxims yield the result that if a member of judicial body is 'subject to a bias (whether financial or other) in favour of, or against, any party to a dispute, or is in such a position that a bias must be assumed to exist, he ought not to take part in the decision or sit on the tribunal'....."

33. It is contended by the learned representative for the workman that it is Sri Shankerappa who is said to have issued warnings to the effect that the delinquent should not be absent without previous sanction of leave, and therefore, Sri Shankarappa had bias against him. In the report Ex. M-55 Sri Shankerappa has stated as follows:

"Before dealing with the charges it may not be out of place if I just say here few words as preliminary leading to the charges.

I found the delinquent often taking leave. On 2nd December 1968 on his leave application (Exhibit B) I found a note that casual leave at credit was Nil. Then I warned the delinquent not to go on leave often, and leave without prior permission would not be tolerated. This warning is noted in Exhibit B. marked as B1 and B2 is the initial of the delinquent. The very fact that casual leave at credit of that clerk was nil, when just first half year of the official year had completed, shows that—too much leave was being utilised, in other words it was hindrance to the Bank work.

On 7th January 1969 he applied for a day's leave (leave letter Exhibit IX). Again on 8th January 1969 he sent leave application Exhibit A for 3½ days. Again on 13th January 1969 he sent a leave letter for two weeks. Again

on 27th January 1969 he sent a leave letter Exhibit XI for previlege leave of one month with a Medical certificate (As to the validity of that certificate I will refer later in this order). On 22nd January 1969 the Secretary submitted to me a note regarding delinquent. It is Exhibit XVI.

All these leave applications seeking Earned leave violate my order *cum* warning to the clerk."

He has also stated that he warned the delinquent not to go on leave often, and leave without prior permission would not be tolerated. Therefore, the contention urged on behalf of the first party that Sri Shankerappa had bias regarding the conduct of the workman, cannot be said to be ill-founded. It may be that Sri Shankerappa was correct in holding that there was dislocation of work or hindrance to the Bank work, because, the first party workman applied for leave often. As recorded by Sri Shankerappa himself he had earlier wearned that he would not tolerate the action of the party. In those circumstances, I find that there is considerable force in the contention urged on behalf of the first party workman that Sri Shankerappa had bias.

34. I have earlier found that the examination of the first party workman even before any evidence was let in by the management was not proper. In 1962 (II) LLJ. 482 it is held by Their Lordships that reasonable opportunity means not only framing of charges and asking for explanation but much more. It is held that the employee must be appraised of the material on which the charges were framed so that he could have an opportunity of adducing or challenging that material so for as could be possible to him. In the present case, the Enquiry Officer was not in possession of any material on which the charges were framed. Therefore, no material was made available to the first party workman to test the same at the time when he was examined.

35. Further, in that case it is held that the enquiry was vitiated by violation of the principles of natural justice because two Directors who had given statements against the delinquents, participated in the enquiry committee and the employee was not informed of such statements. In the present case, Sri Shankerappa had issued warnings to the first party workman regarding his conduct and it is he who was appointed to hold the enquiry. In these circumstances. I find that there is considerable force in the contention urged on behalf of the first party that Sri Shankerappa had bias, and therefore, he was not competent to hold the enquiry.

36. It is urged on behalf of the first party workman that the second party had no authority to enquire into the charges which relate to the conduct of the first party with respect to his dealings with the Gandhi Bazaar Consumers' Co-op. Society. It is all along contended that the second party had no interest in the affairs of Gandhi Bazaar Consumers' Co-op. Society, and therefore no action could have been taken by the second party with respect to the alleged acts of misconduct in relation to the Gandhi Bazaar Consumers' Co-op. Society. It is also contended that the conduct of the first party workman in relation to his dealings with the Gandhi Bazaar Consumers' Co-op. Society would not amount to mis-conduct.

37. What is mis-conduct is not defined in the Rules *i.e.*, the Mysore Co-operative Societies Rules 1969. In sub-rule 9 of rule 18, it is provided that an employee who contravenes the provisions of Rule 6, 7 and 8, shall be liable for such punishment as the managing committee may determine. As provided under sub-rule 10, an employee may be punished for good and sufficient cause.

38. The words for good and sufficient cause are not defined. The learned representative for the second party contends that the conduct of the first party workman in his dealings with the Gandhi Bazaar Consumers' Co-op. Society amounts to mis-conduct.

39. The learned representative for the first party urged that in the absence of any standing orders, action must be taken in accordance with the principles consistant with the model standing orders. Rule 24 of the Model Standing Orders enumerates the acts and omissions on the part of a workman which amounts to misconduct. Rule 25 enumerates the punishment that may be imposed. It is true that the mis-conduct which is the subject matters of charges No. 1 and 3, is not one of the acts mentioned in Rule 24 of the Model Standing Orders. In 1963 (I) LLJ 684, the disciplinary jurisdiction of an employer over the conduct of his employees arose for consideration before Their Lordships of the Supreme Court. In that case, the workman admitted that he spoke sharp words to Omprakash, and contended that the quarrel was purely a private quarrel between one Chakrapani and Omprakash and the workman intervened and wanted Omprakash to return all the articles to Chakrapani. The incident took place in the colony built by the management. Taking into consideration the background of the dispute, the nature of the quarrel the time and place where it took place, the Tribunal held that the conduct of the workman did not constitute mis-conduct. This view is affirmed by Their Lordships of the Supreme Court. It is also laid down by Their Lordships that in the absence of Standing Orders, the question will have to be dealt with reasonably and in accordance with commonsence.

40. In the present case the allegation is that Sri Krishna Moorthy, the first party workman, while he was the honorary secretary of the Gandhi Bazaar Consumers' Co-op. Society, mis-utilized and mis-appropriated the funds of the said Society. The allegations are very grave and severe.

41. In 1968 (I) L.L.J. 512 His Lordships of the Madras High Court held that the order imposing punishment of removal from service on the delinquent employee for a personal matter was beyond the dieciplinary jurisdic-

tion of the Government on its employee. The facts of that case are that the delinquent had developed friendship with a woman employee. Later on some other employee struck friendship with the same woman employee and thus bitter feelings developed between the delinquent and the other co-employee. In the course of correspondence, the delinquent used bad and disrespectful language against high officials. The Enquiry Officer held that the vulgar or obscene language was not directed towards the Government officials, and it was not within the disciplinary jurisdiction of the Government to take note of a vulgar and obscene method of expression employed by the delinquent in a private correspondence between himself and the other employee. It is held that the delinquent was drawn from a stratum of society in which such language is the language of common discourse, and it is difficult to hold that that fact alone can give any power to the Government to hold that he has become unfit to be employed in Government service. But the facts of the present case are not similar to the facts which arose for consideration in the above 2 cases. Further, in 1963 (I) LLJ 684, it is held that if the conduct proved against the employee is of such a character that he would not be regarded worthy of employment, it may, in certain circumstances, be liable to be called misconduct. In these circumstances, I find that it cannot be said that the second party had no authority to make an enquiry with respect to the misconduct which forms the basis of charges 1 and 3.

42. It is contended that the charges are vague and therefore, the enquiry is vitiated. In 1968(I) LLJ. 475, it is held that if the charges are imprecise or indefinite the person charged would not be able to understand them and defend himself, and therefore, the enquiry would not be fair and just. In 1967 (II) LLJ. 46, it is held that the delinquent was unable to show cause against the charges which were vague. It is observed as follows at page 53.

> "The charges, as we have indicated above, which were served on Kanraj were very vague and

he had no opportunity to give a reply to them. The material which was available in support of these charges was also never disclosed to him. The mere fact that Kanraj did not appear on the date fixed for the enquiry will not, in these circumstances, satisfy the requirement of the principles of natural justice that he should have been told of details of the charges and the material available in support of these charges should have been disclosed to him.".

43. In the present case, it is contended on behalf of the second party that the charges are not vague and indefinite and no prejudice has been caused to the first party. Exhibit M 51 contains the charges and I have earlier recorded them in para 23. The first party has furnished his explanation as per Exhibit M-52. From the explanation offered by Sri Krishna Moorthy, it is clear that he had understood the charges levelled against him. In para 1 he has replied in respect of charges 1 and 3.

44. The second charge alleged is that he was applying for leave on the basis of certain facts which were not true. The explanation shows that he has clearly understood the charge. His explanation offered with respect to charge No. 4 also shows that he has understood the charge. It is admitted that charge No. 5 is very specific and all the necessary details have been furnished.

45. In the present case, Sri Krishna Moorthy has not requested the management to furnish any details. In these circumstances, I find that it cannot be held that he was unable to show cause against the charges served on him. For the reasons stated above, I find that the charges framed against the workman as mentioned in Ex-M-51 are not vague and indefinite, and it cannot be said that the workman was unable to show cause against the said charges. It is made out that Sri Shankerappa had bias and he had formed certain opinion with respect to the

conduct of the workman regarding the application for leave. Sri Shankerappa had earlier warned him, and he had also formed an opinion that it would amount to dislocation of work and therefore, it was not proper for Sri Shankerappa to hold the enquiry though he was authorised by the Committee to hold the enquiry. I have also found that the first party was examined at the first instance and no materials or documents are produced before him at the time when he was examined. The evidence of Sri U. S. Narayan Rao was recorded in the absence of the first party, and he has not been afforded any opportunity to cross-examine. The first party workman has also not been given sufficient opportunity after the evidence of the management was recorded, to explain the circumstances appearing against him in the evidence adduced by the management. For these reasons, I find that the enquiry conducted by Sri Shankerappa is not proper and is vitiated for the above reasons.

46. It is contended on behalf of the second party that even in cases where it is found that the enquiry is not properly held, the Court has to consider the merits of the dispute on the evidence led before it and give a decision. In 1963 (II) LLJ. 452 it is ruled as follows:

> "It is well-settled that, if the enquiry is held to be unfair, the employer can lead evidence before the tribunal and justify his action, but in such a case, the question as to whether the dismissal of the employee is justified or not, would be open before the tribunal and the tribunal will consider the merits of the dispute and come to its own without having any regard for the view taken by the management in dismissing the employee. If the enquiry is good and the conduct of the management is not *mala fide* or vindictive, then of course, the tribunal would not try to examine the merits of the findings as though it was sitting in appeal over the conclusions of the enquiry officer.

Now I will examine if the evidence led before this Court is sufficient to hold that the charges levelled against the first party workman under Exhibit M-51 are established.

47. It is also contended by the learned representative for the workman that the enquiry is instituted with a *mala fide* object, and there was no basis for holding the enquiry. It is urged that the leave applied for by the first party workman has been sanctioned and as such, there was no occasion to hold an enquiry on charge No. 5. The learned representative for the second party contends that the leave applied for is not sanctioned, but while passing the order of punishment the management has merely ordered the payment of money due in respect of the leave that was at the credit of the workman. The final order passed is as per Ex. M-61. The operative portion of the order reads as follows:

> "Further it was resolved unanimously that Sri M. Krishna Murthy is dismissed from service with effect from forenoon of 1st September 1969 and that the period of his absence from 7th January 1969 to 31st August 1969 both days inclusive as a special case be treated as leave with full pay from 7th January 1969 to forenoon of 10th March 1969 (both days inclusive) and leave with half pay and full D.A. from 10th March 1969 to 31st August 1969 (both days inclusive) (less) subsistence allowance already paid to him."

It is urged by the learned representative for the second party that salary in respect of the period of leave that was at the credit of the workman has been ordered to be paid, since the employee dismissed has to be paid all wages and allowances due to him including his leave salary due to him. He has drawn my attention to the commentary at page 45 by Sri E. F. Eduljee, in his book 'A Guide to Disciplinary Proceedings'. It is stated as follows:

> "An employee who is dismissed has to be paid all wages and allowances due to him, including his

leave salary due to him, but he will receive nothing in lieu of notice."

From a reading of Exhibit M-61, I find that the management has not sanctioned leave applied for by the first party, as such, it is only ordered that the period of his absence from 7th January 1969 to 10th March 1969 be treated as leave with full pay and leave with half pay and full D.A. from 10th March 1969 to 31st August 1969. Thus the management has only ordered that the pay for the period of leave which was at the credit of the workman be paid. In these circumstances, I find that there is no force in the contention that there was no material to hold an enquiry regarding charge No. 5.

48. Charge No. 1 states that the workman Sri Krishna Moorthy was involved in charges of mis-appropriation, mis-management and mis-utilisation of the funds of the Gandhi Bazaar Consumers' Co-operative Society, Shimoga. Charge No. 3 states that the case is decided against Sri Krishna Moorthy and it is so established that he has mis-appropriated the funds of a sister Co-operative Institution, and therefore, he is not a desirable element to be continued in the Bank.

49. The management has taken action to enquire into the alleged acts of misconduct committed by Sri Krishna Moorthy with respect to the Gandhi Bazaar Consumers' Co-operative Society Limited, Shimoga, on receiving the following documents. Exhibit M-5 is the letter dated 27th October 1966 addressed by the Assistant Registrar of Co-operative Societies. In that letter the Assistant Registrar of Co-operative Societies has required the second party Bank to intimate if the first party Sri Krishna Moorthy has been permitted to accept a second appointment in Sri Kalika Parameshwari Co-operative Society Limited, Shimoga. Ex. M-6 is another letter dated 14th November 1966. In this letter the Assistant Registrar of Co-operative Societies has stated that a full-time employee of any institution is not expected to seek

additional employment elsewhere without the permission of the employer as it adversely affects the efficiency of the institution concerned. Thereafter the second party has issued a reply as per Ex. M-7 stating that the Bank has not permitted Sri Krishna Moorthy to accept a second appointment. Sri M. Krishna Moorthy has furnished his explanation as per Ex. M-8 stating that he has not taken up any additional employment. Under Ex. M-10, letter dated 31st December 1966, the Assistant Registrar of Co-operative Societies has instructed the second party management to institute an enquiry and take necessary action against Sri Krishna Moorthy for having accepted additional appointment.

50. The second party has received Ex. M-11, a copy of the notice issued to the first party Sri Krishna Moorthy by an advocate on behalf of Gandhi Bazaar Consumers' Co-op. Society. M. W. 3 Sri Shankerappa, the President has stated that the contention of the first party that he had not taken up any employment elsewhere is not ture, and as per Memo Ex. M-9 every employee should obtain permission of the Committee if they desire to work as part-time employees. That the memo Ex. M-9 is also circulated among the employees, and Sri Krishna Moorthy has signed the same. Further, he states that he saw Ex. M-10, a communication sent by the Asst. Registrar, and convened a meeting of the Board of Directors, and brought the subject for discussion. M. 63(b) is the copy of the resolution proceedings of the Committee, and it refers to subject No. 6/13th October 1968. As per Ex. M-63(b) the Committee had decided to call for the explanation of the worker Sri Krishna Moorthy.

51. By his letter dated 24th October 1968, the Asst. Registrar of Co-op. Societies Ltd., Shimoga, has intimated the second party that Sri Krishna Moorthy was the Secretary of Gandhi Bazar Consumers' Co-op. Society Ltd. and he was responsible to make good a certain amount. He has also expressed that it is not desirable to continue such

persons who were reported to have misappropriated, mismanaged and mis-utilised the funds in a sister Co-op. institution, and has requested the second party to take action against the employee. After the receipt of a copy of the notice Ex. M-11 a notice has been issued as per Ex. M-12 to Sri Krishna Moorthy. The first party was required to state is say with respect to the notice. Ex- M-14 is the Memo issued to Sri Krishna Moorthy stating that the subject matter is placed for consideration on 3rd November 1968, and has also been requested (first party) to be present in person before the meeting. Ex. M-15 is the reply furnished by Sri Krishna Moorthy. In the meeting held on 3rd November 1968, a resolution was passed by the committee *i.e.*, the Board of Directors, as per Ex. M-63(c). Ex. M-63 (d) is the certified copy of the resolution. It is resolved as follows:

> "Resolved that in view of the D. O. No. 1844/68-69 dated 24th October 1968. from the Assistant Registrar of Co-operative Societies, Shimoga notice be issued to Sri M. Krishna Murthy to show cause within ten days from the date of receipt of this notice why he should not be kept under suspension until he is absolved of the charges referred to in the said letter of the Assistant Registrar of Co-operative Societies, Shimoga."

52. It is contended on behalf of the first party that the matter that was for consideration regarding the conduct of the first party Sri M. Krishna Moorthy, in relation to Gandhi Bazaar Consumers' Co-op. Society was a matter over which the second party could not have held an enquiry. It is contended on behalf of the second party that since it was alleged that Sri Krishna Moorthy had mis-utilised the funds of a sister Co-op. institution, it was open to the second party to consider if such a person could be continued in its employment. I feel that the second party management was correct in holding an enquiry to ascertain if the facts alleged against Sri Krishna Moorthy were true. Ex. M-63

(d) shows that the intention of the second party was to keep the workman under suspension until he is absolved of the charges referred to in the letter of the Asst. Registrar of Co. op. Societies. Ex. M-17 is the show-cause notice issued to Sri Krishna Moorthy. Ex. M-18 is the reply furnished by Sri Krishna Moorthy. Under Ex. M-19, he has requested for time. Ex. M-20 is the explanation furnished on 23rd November 1968. In that letter he has stated that the Gandhi Bazaar Consumers' Co-op. Society, has already filed a dispute against him and that he does not wish to state anything about the matter.

53. From the resolution dated 3rd November 1968 it is clear that the second party management has taken action to ascertain if the allegations made against Sri Krishna Moorthy to the effect that he has mis-utilised or mis-managed the funds of the Gandhi Bazaar Consumers' Co-op. Society, was true and the intention was to keep him under suspension until he is absolved of the charges. In these circumstances, I find that it cannot be found that the enquiry on charges Nos. 1 and 3 has been instituted *mala fide*. It was also contended by the learned representative for the first party that the alleged acts of mis-utilisation of the funds are said to have been committed in the year 1966, and therefore there was no necessity for the second party to take action in the year 1968. The facts regarding the alleged acts of misconduct have been brought to the notice of the second party management only in the year 1968. The second party has resolved to take action only after receipt of a copy of the notice Ex. M-11, and after the receipt of the letter of the Asst. Registrar of Co-op. Societies dated 24th October 1968. Therefore, I find that it cannot be said that the second party has tried to take action against the first party workman in respect of a past misconduct with a view to victimise him.

54. The first party workman Sri Krishna Moorthy has stated that he was a member of the executive committee of the Co-operative institutions Employees Union (Karnatak)

and Vice-President of the Shimoga District Co-op. Employees Union. He has produced the notice Ex. W-2 to W-6, the pamphlet Ex. W-7 and pamphlet Ex. W-8, and also the notices Exs. W-10 to W-17, to show that he was an active member of the Union. Further he has stated that he had represented the grievances of the staff of the second party Bank several times and has produced Exhibits W-23 and W-24, the representations made by him. Ex. W-23 is a notice circulated among the employees of the second party bank to consider the steps to be taken for implementation of the ad hoc committee recommendations regarding the pay-scales. Ex. W-24 is a letter written to the General Secretary, Central Co- operative Institutions Employee's Union. It is dated 26th February 1968. It is stated by W.W. 1 Sri Krishna Moorthy that on account of his representing the grievances of the employees of the second party, bank the management bore grudge against him and that is one of the causes which resulted in holding domestic enquiry against him. It is not reasonable to hold that the Asst. Registrar of Co-op. Societies, Shimoga, was persuaded to institute the enquiry regarding the conduct of the first party in his relation to the affairs of the Gandhi Bazaar Consumers' Co-op. Society by the second party management. It is admitted that there existed a dispute between the first party workman and the Gandhi Bazaar Consumers' Co- op. Sociey. Therefore, I find that it is not reasonable to conclude that the second party management has resolved to take action against the first party because he was taking part in the activities of the Union or that he had represented the grievances of the employees of the Bank.

55. First I will consider charges 1 and 3. With respect to these charges, the management has examined M.W. 1 U. S. Narayan Rao, M.W. 1 has stated that the first party workman, Sri Krishna Moorthy, was the Secretary of Gandhi Bazaar Consumers' Co-op. Society from 1963 to 1966, and in the audit of the accounts maintained by him a shortage was found and a suit was filed against Sri Krishna Moorthy and a decree was obtained.

Ex. M-1 is the certified copy of the judgement by the Appellate Court and it is dated 28th February 1969. Ex. M-2 is the certified copy of the judgment by the Appellate Court which is dated 25th November 1970. Further he has stated that a criminal case was also lodged against the first party for misappropriation of the same amount, and the case is still pending in the Magistrate's Court, Shimoga. He has stated in his cross-examination that the Honorary Secretary is wholly responsible for the daily accounts and transactions of the Society, and the first party, as Secretary, was making purchases of the articles for the Society. Further he has stated that he did not hand over charge and left after leaving a letter of resignation, and they had to break open the lock put to the door of the Society under a Mahazar on 1st January 1967. In his deposition as W.W. 1 Sri Krishna Moorthy, has stated as follows: "There was a case of shortages against me in the Court of Arbitrator at Shimoga. The arbitrator gave decision against me. I appealed to the Co-operative Appellate Tribunal, Bangalore against the decision of the arbitrator. I failed in the appeal. I filed a Writ Petition against the decision of the Co-operative Appellate Tribunal, Bangalore. I filed Writs in two cases and both the Writs are pending and stay orders were granted. But he has not produced the copies of Stay Orders or the copies of the Writ Petitions filed by him. It is urged on behalf of the second party that the fact stated by the first party that he has obtained Stay orders, is not true and correct. It is made out that there was shortage in the funds of the Gandhi Bazar Consumers' Co-operative Society, Shimoga, while Sri Krishna Moorthy was working as its Secretary, and it is attributed to Sri Krishna Moorthy. It is also clear that a criminal case has been filed against the first party workman stating that he has misappropriated the funds of the Society, and it is still pending. In its decision the Tribunal reached to the following findings (Ex. M-1)

> "The appellant does not deny the correctness of the claim as regards these items. He denies all knowledge and wants to shift the liability to the

manager and other members of the staff. The assertion that he was only an honorary Secretary and had nothing to do with the business of the Society does not stand scrutinies."

It was further held that :

"It will thus be seen that the Secretary is the custodian of the Society's property and is responsible for the same. It is therefore idle for the appellant to plead his innocence and deny his liability. The records bear witness to the fact that he was in actual charge of the Society's affairs. Therefore he is clearly responsible for the shortages in stock and for the cash payments which are unaccountd for.

In its decision in Appeal Petition No. 588 of 1969 (Ex. M-2) the Tribunal has reached to the following findings :—

"The question, therefore, would be, whether the appellant was or was not the honorary Secretary of the respondent Society during the period from 15th December 1966 to 31st December 1966. Though it is asserted for the appellant that he was not the Secretary during the period and handed over charge on 15th December 1966 itself, no charge list is produced. There is no entry in any of books of account of the respondent Society to show that the appellant hand over charge on 15th December 1966. On the other hand Ex. P. 23 the Mahazar prepared by the authorities of the respondent Society on 1st January 1967 shows that the appellant could not have handed over charge on 15th December 1966. It was because, he continued to be in charge even after 15th December 1966, the directors of the managing committee of the respondent Society, thought it fit to take charge by drawing up a mahazar. Having regard to these circumstances, therefore, it has to be

observed that it is futile to contend for the appellant that he was not in charge of the respondent Society between the period from 15th December 1966 to 31st December 1966. As already stated above this is the main contention advanced for the appellant and no other points are pressed before us."

56. From the findings of the Appellate Tribunal in the above cases and from the evidence of M.W. 1 it is clear that Sri M. Krishna Moorthy has not properly accounted for the money of the Gandhi Bazaar Consumers' Co-operative Society. It is also made out that he has not handed over the charge, and action had to be taken to break open the lock put to the door. The explanation furnished by Sri Krishna Moorthy in his explanation Ex. M.52 is that it is false that he is involved in charges of misappropriation, mis-management and mis-utilisation of the funds of the Gandhi Bazaar Consumers' Co-op. Society Ltd., Shimoga. He has stated that under bye-law 44 it is held that he is held responsible for all the losses as the Secretary of the Society. But it is clear that the Tribunal has also found that he is liable for the cash payments which are unaccounted, in addition to the shortages in the stock. Therefore, it is clear that he has not properly accounted for the moneys of the Society. Whether the facts proved are sufficient to hold that he has committed misappropriation of the funds or not, is not a matter to be decided so far as the second party was concerned. It was necessary for the second party to determine on the facts proved if the conduct of the first party was worthy of employment. In charge Nos. 1 and 3 it is not stated that the first party has misappropriated any funds of the second party Bank or any other Bank. It is only stated that there was allegations that he was involved in such cases. Therefore, it must only be found that the intention of the second party was to ascertain if the first party workman was involved in the charges levelled against him and to consider whether he was a desirable employee.

57. I have earlier found that if it is held that the conduct proved against the employee is of such a character that he would not be regarded as worthy of employment, it may, in certain circumstances, be liable to be called misconduct. With respect to charges Nos. 1 and 3 what is established is that Sri Krishna Moorthy has not properly accounted for the moneys received by him as the Honorary Secretary of the Gandhi Bazaar Consumers' Co-op. Society and he was also responsible for the shortages in the said Society. The second party is a Co-operative Bank dealing with the funds contributed by the shareholders. The Gandhi Bazaar Consumers' Co-op. Society is also a Co-operative institution. Has the first party workman conducted himself while he had been entrusted with the funds of the Gandhi Bazaar Consumers' Co-op. Society, is certainly a matter which has a bearing on the conduct of the first party in relation to his employment. It would also show whether an employer can repose confidence or not in such an employee. Therefore, I find that the conduct of the first party could be recorded as not worthy of employment and therefore, it is a misconduct. I hold that the conduct of the first party amounts to misconduct and the principles laid down by their Lordships in 1963(I) LLJ 684 apply to this case and the first party is guilty of misconduct.

58. The charge No. 2 is as follows:

> "His applying for leave frequently is only due to the fact that he is forced to attend the cases pending against him and thus has given false statement to the effect that he is not in good health."

The learned representative for the second party contended that Sri Krishna Moorthy has applied for leave on the ground that he was not in good health, and he has utilised the said leave for the purpose of attending the cases pending against him. The leave applications Exhibits M-32 to M-48 are the applications made by the first party work-

man in the year 1968. In Ex. M-32 Sri Krishna Moorthy has applied for leave on the ground that he is not keeping in good health. In Ex. M-33 he has stated that he has some urgent work. In Ex. M-34 also he has stated that he has some urgent work. In Ex. M-35 also he has stated that he has some urgent work. In Ex. M-36 also he has stated that he has some urgent work. In Ex. M-37 he has stated that he has to go to Bhadravathi on some urgent work. In Ex. M-38 he has stated that he has to go to Jog on some urgent work. In Ex. M-39 he has stated that he has to go to Bhadravathi on some urgent work. In Ex. M-40 he has stated that he has to go to Bangalore on some urgent work. In Ex. M-41 he has stated that he has to go to Jog on some urgent work. In Ex. M-42 he has stated that he has to attend the marriage of his relation. In Ex. M-43 he has stated that he has to go to Gajanur on some urgent work. In Ex. M-44 dated 30th October 1968 he has stated that he was suffering from fever. In Ex. M-45 he has stated that he was still suffering from fever. In Ex. M-46 dated 1st November 1968 he has stated that he was suffering from fever. In Ex. M-47 he has stated that he is still running temperature. In Ex. M-48 he has stated that he has to go to Bangalore on some urgent work. Thus he has stated that he was not keeping in good health in Exs. M-32 dated 11th September 1968, M-44 dated 30th October 1968, M-45 dated 31st October 1968, M-46 dated 1st November 1968, M-47 dated 4th November 1968. The two other leave letters are Ex. M-25 dated 2nd December 1968 and Ex. M-26 dated 9th December 1968. In Ex. M-26 he has applied for leave stating that he has to attend a case in Co-op. Appellate Court, Bangalore. It is necessary to consider whether the second party has established that on 11th September 1968, 30th October 1968, 31st October 1968, 1st November 1968, 4th November 1968 and 2nd December 1968, the first party had applied for leave on false grounds. From Ex. M-1, it is found that the dates of hearing in that cases were the following: 13th September 1968, 11th October 1968, 26th November 1968, 10th December 1968, 28th December

1968 and 28th February 1969. In these circumstances, I find that there is no material on record to hold that Sri Krishna Moorthy has applied for leave on false grounds.

59. Charge No. 4 reads as follows:—

> "He is applying for leave frequently in spite of warning to the effect that without previous sanction of leave he should not absent and should not cause dislocation to the work of the Bank."

M.W. 3 Sri Shankerappa has stated that the first party was absent at the counter of the bank on 18th October 1968 and on the next day also he did not submit any leave letter nor did he give any explanation why he remained absent without leave on 18th October 1968. He has spoken to Ex. M-23 a Memo, wherein he has required the first party workman to give his explanation. The first party has given his explanation as per Ex. M-24. The President has warned him that he should not repeat such things in future. In respect of the leave letter dated 2nd December 1968, Ex. M-25, the President has passed an order stating that leave should be utilised with previous permission. This has also been brought to the notice of Sri Krishna Moorthy and he has intitialled as per Ex. M-25(b). Sri Shankerappa has stated that the reason for his making an endorsement as per Ex. M-25(a) was that Sri Krishna Moorthy was in the habit of remaining on leave without obtaining prior sanction, and he had no casual leave at his credit on 2nd December 1968 when he applied for two days' leave.

60. Sri Mylar Rao, M.W. 2, has also spoken to Ex. M-23 and Ex. M-24 and Ex. M-25(a). It is urged on behalf of the first party workman that the conduct of the first party in applying for leave and remaining absent without obtaining previous sanction does not amount to misconduct. Sub-rule (3) of Rule 18 of the Mysore Co-operative Rules 1960 provides regarding the regulation of

leave. As provided by sub-clause(9) of Sub-rule(3), leave may be cancelled by the authority empowered to grant it. Under sub-clause (2) casual leave shall not ordinarily be allowed for more than 7 days at a time. Sub-clause (1) of sub-rule (3) states that wilful absence without previous sanction whether in continuation of leave or otherwise shall render an employee liable for disciplinary action. Therefore, it must be established that on the days on which the employee remained absent without previous sanction, was wilful absence *i.e.*, he had not given sufficient grounds to be absent on those days. Merely because he was absent without obtaining previous sanction and not making an application for leave, cannot be said to be misconduct. Though on 2nd December 1968 the first party remained absent without previous sanction, it cannot be said that he had committed misconduct. In Ex. M25 he has prayed for leave on the ground that he was not keeping in good health. Therefore, I find that the facts established in respect of Charge No. 4 do not amount misconduct, and it cannot be found that the first party workman is guilty of misconduct in so far as it relates to charge No. 4.

61. Charge No. 5 is as follows:—

> "On 7th January 1969 he applied for a days' leave, he did not turn to duty on 8th January 1969 but sent an application for further leave of 3½ days. Even on 13th January 1969 he did not return to duty but applied for two weeks leave and application was not supported with medical certificate. On 27th January 1969 with an application for a month's further leave he sent a Medical certificate dated 25th January 1969, wherein it is stated that he is under Medical treatment from 10th January 1969. Nothing prevented him from producing the medical certificate with his application dated 13th January 1969. His attention is drawn to

Rule 18(3) (VI) of the Mysore Co-operative Societies Rules 1960 and he has failed to produce a medical certificate from a Government Medical Officer not below the rank of an Asst. Surgeon."

Sri Shankerappa, M.W. 3, has stated that in the month of January 1969, the first party Sri Krishna Moorthy went on applying for leave on 7th January 1969, 8th January 1969, 13th January 1969 and 27th January 1969 as per Exhibits M-27 to M-30. Further he has stated that as per the subsidary rules an official cannot claim leave, as a matter of right, because the work of the Bank would be dislocated and hampered. Further, he has stated that so far as M-27, M-28 and M-29 are concerned, the first party did not get any prior sanction, and the Secretary made a report as per Ex. M-22 regarding the dislocation of work on account of the absense of the first party and requesting for distribution of the work among 3 employees. Under Ex. M-30 the first party had applied for one month's leave. He M.W. 3 has stated that he placed the entire matter before the Board of Directors on 9th February 1968 and resolutions were passed as per Resolution No. 6(1) (2) and (3) to the effect that the clerk is in normal health. Further he states that the Directors resolved that he must be recalled to duty and that if he did not join duty within 3 days he must be kept uner suspension, and authorised the President to take an extra hand if necessary. Further he states that they received on 27th January 1969 a leave letter alongwith a medical certificate dated 25th January 1969 from a private medical practitioner to the effect that Sri Krishna Moorthy was advised rest for one month. He further states that whenever leave is applied for on grounds of ill-health, the leave letter must be accompanied by a medical certificate issued by a Government Doctor not below the rank of an Asst. Surgeon, and the medical certificate submitted by the first party was from a private medical practitioner. He has stated that the first party was not sick. M.W. 2 Sri Mylar Rao, the Secretary, has stated that the first party applied for leave on 9th December

1968, 7th January 1969, 8th January 1969, 13th January 1969, 21st July 1969 and 13th February 1969. All these leave letters were sent to the Bank and he did not take permission of the President or have the leave sanctioned before going away. These applications are Exs. M-26 to M-31. Further he has stated that it is only with Ex. M-30 a medical certificate dated 25th January 1969 was enclosed. From the evidence of M.W. 2 and M.W. 3, it is made out that Sri Krishna Moorthy has applied for leave on 7th January 1969, and has remained absent without previous sanction. Subsequently he has made applications Exs. M-28, M-29 and M-30. Ex. M-50 is the copy of the resolution No. 6, dated 9th February 1968. It is resolved as follows :—

> "As the clerk has not taken previous sanction of the President and in view of the fact that the clerk is in his normal health leave cannot be granted any further. He may be recalled for duty. If he does not join duty in 3 days he may be kept under suspension until further orders"

Thereafter the President has issued a Memo dated 9th February 1969 as per Ex. M-49 requiring the first party workman to return to duty within 3 days from the date of receipt of the Memo. Ex. M-31 is the reply issued by the first party workman. He has stated that his health does not permit him to attend to any heavy work, and has therefore prayed for sanction of leave. The President has made a note to the effect that the explanation is not satisfactory

62. The President has stated that after receipt of the reply Ex. M-31 he distributed the work among three officials Sri Y. G. Doreswamy, Sri M. D. Gurumurthy Rao Sri H. R. Ananda Rao, and that they had been paid Rs. 25 each for their extra work as per resolution of the Board of Directors dated 16th March 1969. Ex. M. 63(k) is the certified copy of the resolution. He has also stated that

he found that the explanation given by the workman was unsatisfactory and therefore, he had to take disciplinary action against him. On 24th February 1969 he has kept the first party under suspension as per the originonal of Ex. M. 20. He has stated that the first party has caused hindrance to Bank work by applying for leave frequently. Sri Shankerappa, the President, has stated that no medical certificate issued by a Government Doctor was sent alongwith the leave application, and therefore, it is sought to be made out that the application for leave was defective. The learned representative for the first party urged that leave applied for was earned leave and not sick leave. Therefore there was no necessity on the part of the first party workman to obtain a certificate from a Government Doctor. Sub-clause (5) of sub-rule (3) of Rule 18 provided that earned leave subject to a maximum of four months may be granted to an employee if due ,on full pay before his retirement. Sub-clause (6) regulates sick leave. To obtain sick leave, production of a medical certificate from a Government Medical Officer, is necessary. Therefore, it is true that the management was not correct in holding that the leave application was defective. The only question that arises for consideration is whether the ground on which the leave was applied for was true or whether the first party workman remained absent wilfully, and caused dislocation in the work of the second party Bank.

63. Exhibits M. 27, M. 28, M. 29 and M. 30 are the applications for leave made by the first party. The first party, W.W. 1, has stated as follows : "I applied for leave on 7th January 1969, 8th January 1969, 13th January 1969 and from 27th January 1969 for one month for earned leave. I was not well so I applied for leave. On 27th January 1969, I produced the medical certificate. The medical certificate was issued by the medical practitioner by name Sri P. Narayan." He has also stated that according to the Memo Ex. W. 1 he has been granted leave. I have earlier stated that while imposing the order of punish-

ment, the second party has merely allowed the leave salary, and it cannot be said that the leave applied for has been sanctioned. The workman claims that he had applied for leave because he was not well. It is true that the workman has not examined the Doctor who issued him the medical certificate. The second party has passed a resolution on 9th February 1968 and Ex. M. 63 (h) is the copy of the resolution. On the leave application it is resolved as follows:

> "As the clerk has not taken previous sanction of the President and in view of the fact that the clerk is in his normal health leave cannot be granted any further. He may be recalled for duty. If he does not join duty in 3 days he may be kept under suspension until further orders."

Sri Shankerappa has stated that the medical certificate submitted by the first party was from a Private Medical Practitioner, and the first party was not sick. Further he has stated that leave was not granted and he was asked to return to duty within 3 days from the receipt of Ex. M. 49. This Memo is served on the first party workman and he has sent his reply as per Ex. M. 31. In Ex. M. 31 he has stated that his health does not permit him to attend to heavy work. Ex. M. 31 is dated 15th February 1969. Sri Shankerappa has positively affirmed in his statement that the first party was not sick. The Resolution dated 9th February 1968 does not show that any material was available before the Board of Directors to show that the Clerk is in normal health. The mere resolution stating that he is in normal health is not sufficient to hold that the facts stated by the applicant in his leave application are not true. Of course, Sri Shankerappa has stated that the first party was not sick, but he has nowhere stated that he had seen the first party or that he had observed his movements. Ex. M. 55 is the report made by the President regarding charge No. 5. It is observed that charge No. 5 is proved and the medical certificate cannot be accepted. He has not recorded that the workman was in good health. I have earlier stated that it was not necessary for the

workman to have produced a medical certificate from a Government Medical Officer, since he had applied for earned leave and not for sick leave. The fact that the workman has not produced a medical certificate from a Government Medical Officer, has led the management not to accept the medical certificate produced by Dr. Narayan. It is true the Doctor is not produced and examined before Court. If the management found that the certificate produced by the first party was not genuine, it was open to the management to require him to appear before another medical Officer and furnish a fresh certificate. Merely because the certificate is produced from a Private Medical Practitioner, it cannot be said that the facts stated in that medical certificate are not true. It is true that the medical certificate is not marked as Exhibit in this case, but it is available in the file. I find that it was necessary to refer to the medical certificate issued by Dr. Narayan even though it is not marked as an Exhibit. This certificate is dated 25th January 1969. It is stated that Sri Krishna Moorthy was under treatment for N.C.C.P. since 10th January 1969, and he was advised rest for about a month. But there is nothing to show that the Doctor has not advised rest and that the certificate does not contain true facts.

64. It is true that the management has made arrangements for distribution of work and paid remuneration. The Secretary, Mylar Rao, has stated that, since the work was being hampered he submitted a report for providing additional hand. Sri Shankarappa has stated that after the receipt of the reply Ex. M-31 he distributed the work among three officials, and they have paid Rs. 25 each as allowance as per the Resolution of the Board of Directors dated 16th March 1969. Thus it is true that the management has incurred additional expenditure in respect of the work to be carried on by the first party workman. Sri Gurumurthy Rao is examined as M.W. 4. He has stated that in the month of March 1969 he received extra allowance for the work done and that the work had been distributed among 3 persons. Sri T. Vyasachar has spoken to the Resolution passed by the Board of Directors regarding the clearance of arrears of work. But the

question for consideration is whether the first party workman remained absent wilfully. I have earlier stated that it is only wilful absence without previous sanction that amounts to misconduct. If there is sufficient reason, it cannot be said that the absence of the party without previous sanction is misconduct. It is true that a notice has been issued to the first party requiring him to report for duty. He has explained that his health does not permit him to resume duty. The management has merely failed to accept the medical certificate issued by the Registered Medical Practitioner on the ground that a certificate from a Government Medical Officer was necessary. I have found that this is not correct. In these circumstances, I find that it cannot be said that the first party was absent wilfully and with a view to cause dislocation of work. It is true that there was arrears of work and the Bank has incurred additional expenditure. But that is not a reason to hold that any misconduct is committed by the first party workman in relation to charge No. 5.

65. For all the reasons stated above, I find that the only allegation proved against the first party workman is that he has not accounted for the money received by him as Secretary of the Gandhi Bazaar Consumers' Co-op. Society, and he was also responsible for the shortage in stock of the Society. The conduct of the first party as regards to his dealings with the Gandhi Bazaar Consumers' Co-op. Society, is not worthy of employment, and therefore, it is a misconduct over which action could be taken by the second party management. This is my finding on issue No. 3.

66. In this case the first party workman is dismissed as per Ex. W-1 on the report made by the Enquiry Officer as per Ex. M-55. I have found that the enquiry is not properly held. But now after examining the material placed before me, I have come to the conclusion that charge No. 1 is established and the first party workman is found guilty of misconduct.

67. The next question for consideration is whether the punishment imposed on the first party workman is reasonable. In this case the first party workman is dismissed from service on the ground that the charges 1 to 5

in Ex. M-51 are established. It is true, I have found, that charges 2, 4 and 5 are not established. It is contended on behalf of the first party that the misconduct of the first party is not so grave as to pass an order of dismissal. In 1965 (I) LLJ. 462 it is laid down by their Lordships of the Supreme Court as follows :

> "It is now well-settled that the industrial tribunal is not to examine the finding or the quantum of punishment because the whole of the dispute is not really open before the tribunal as it is ordinarily before a Court of appeal. The industrial tribunal can only interfere if the conduct of the employer shows lack of *bona fides* or victimisation of employee or employees or unfair labour practice. The tribunal may in a strong case interfere with a basic error on a point of fact or a perverse finding, but it cannot substitute its own appraisal of the evidence for that of the officer conducting the domestic enquiry though it may interfere where the principles of natural justice or fairplay have not been followed or where the enquiry is so perverted in its procedure as to amount to no enquiry at all. In respect of punishment it has been ruled that the award of punishment or misconduct under the standing orders, if any, is a matter for the management to decide and if there is any justification for the punishment imposed the tribunal should not interfere. The tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe. But where the punishment is shockingly disproportionate regard being had to the particular conduct and the past record or is such, as no reasonable employer would ever impose in like circumstances, the tribunal may treat the imposition of such punishment as itself showing victimisation or unfair labour practice."

In that case it was found by Their Lordships that the punishment imposed was one which no reasonable employer would have imposed in like circumstances unless it served some other purpose. In the present case there is no material to hold that the punishment of dismissal is imposed to serve some other purpose. I have found that the conduct of the first party workman is not worthy of employment. In these circumstances, I find that the tests laid down by Their Lordships in the above case, are not satisfied in this case, and this is not a fit case where this Court can interfere with the order of dismissal passed by the second party Bank.

68. The 5th issue raised is whether the first party workman is entitled to relief of reinstatement with backwages. In view of my finding that the first party workman is guilty of the charges 1 and 3, and the order of dismissal passed against him cannot be interfered with by this Court, I find that the workman is not entitled to the relief of reinstatement with backwages. This is my finding on issue No. 5.

69. In the result, I answer the additional issues as follows:

Issue Nos. 1 and 4: This Court has jurisdiction to entertain the dispute referred to by the Government.

Issue No. 2: The domestic enquiry held by the second party management is not valid.

Issue No. 3: The charges Nos. 1 and 3 mentioned in Exhibit M-55 are proved.

Issue No. 5: The first party is not entitled to the relief of reinstatement.

69. The points of dispute as specified in the order of reference are the following:

(1) Whether the management of City Co-operative Bank, Shimoga, are justified in dismissing their workman Sri M. Krishna Murthy with effect from 1st September 1969?

(2) If not, to what other relief the workman entitled to?

70. In view of my findings on the additional issues raised in this case, I find that the second party management was justified in dismissing the workman Sri M. Krishna Murthy with effect from 1st September 1969, and he is not entitled to any relief. In the result I pass an Award holding that the second party management *i.e.*, the management of City Co-operative Bank, Shimoga, was justified in dismissing their workman Sri M. Krishna Murthy with effect from 1st September 1969, and he is not entitled to the relief of reinstatement. In the circumstances of this case, I direct the parties to bear their own costs.

B. HANUMANTHAIAH,
Presiding Officer,
Labour Court, Mangalore.

Mangalore.
Dated : 29-11-1972.

ORDER

Bangalore dated 23rd December 1972

S.O. 228.—WHEREAS, by State Government Order No. FCL 189 LLD 70, dated 21st August 1970, the Industrial Disute between the workmen and the management of City Co-operative Bank Limited, Shimoga was referred to the Labour Court, Mangalore for adjudication.

AND, WHEREAS, the Labour Court has submitted to the State Government its award in respect of the said Industrial Dispute.

NOW, THEREFORE, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), the Government of Mysore are pleased to direct the publication of the said award as above, in the *Mysore Gazette.*

[No. FCL 253 LLA 72.]

By Order and in the name of the Governor of Mysore,

ANIRUDHA DESAI,
Under Secretary to Government,
Food, Civil Supplies and Labour Department.